

Introduced/First Reading: May 1, 2023
Second Reading/Adopted: August 21, 2023
Publication: August 27, 2023
Effective Date: September 10, 2023

CITY OF MASON
ORDINANCE NO. 244

**AN ORDINANCE TO AMEND CHAPTER 2- ADMINISTRATION, ARTICLE III- OFFICERS AND
EMPLOYEES, DIVISION 3- ETHICS**

August 21, 2023

THE CITY OF MASON ORDAINS:

Chapter 2, Article III, Division 3 of the Mason City Code is hereby amended to read as follows:

Sec. 2-101. Purpose.

Public officials and employees, by virtue of their positions, are trustees of the public, chargeable with honesty, integrity, and openness in their handling of public affairs. Loyalty to the public interest requires that all matters shall be handled with independent, objective judgment, free from avoidable conflicts of interest, improper influences, and competing loyalties. When conduct inconsistent with these expectations occurs, public suspicion is heightened and, therefore, public confidence is jeopardized. Where government is founded upon the consent of the governed, it is critical that each citizen have complete confidence in the integrity of the government. Each public official and employee must endeavor to earn and honor the public trust in the conduct of all official duties and actions. The purposes of this division are to define standards of ethical conduct that are clearly established and uniformly applied and to establish procedures for evaluating ethical questions. These standards and procedures will provide the public, as well as public officials and employees, with guidance about ethical expectations for trustees of the public.

(Ord. No. 132, § 2, 9-7-1999; Ord. No. 233, 3-1-2021)

Sec. 2-102. Definition.

In this division "city official" means a person elected to the city council or appointed to the planning commission, zoning board of appeals, historic district commission, building code board of appeals, downtown development authority, local development finance authority or board of review. City official shall not include city manager or city attorney.

(Ord. No. 132, § 4, 9-7-1999; Ord. 222, § 4, 12-3-2018; Ord. No. 233, 3-1-2021)

Sec. 2-103. Guidelines and standards for ethical behavior.

It is the public policy of this city that all city officials and city employees shall construe and implement ethical standards and guidelines with sincerity, integrity and commitment so as to advance the purpose of this division in accordance with the guidelines and standards described in this section.

(a) *Gifts.* A city official shall not, directly or indirectly, solicit or accept a gift that could influence the manner in which they perform their official duties.

(b) *Preferential treatment.* A city official shall not use their official position to unreasonably secure, request, or grant any privileges, exemptions, advantages, contracts, or preferential treatment for themselves, their immediate family, or others.

(c) *Use of information.*

(1) A city official who acquires information in the course of their official duties, which by law or policy is confidential, shall not prematurely divulge that information to an unauthorized person. Information which is deemed exempt from disclosure under the Michigan Freedom of Information Act, (MCL 15.231 et seq.) or which is the subject of a duly called closed meeting held in accordance with the Michigan Open Meetings Act, (MCL 15.261 et seq.) is confidential.

(2) A city official shall not suppress or refuse to provide any city report, document, or information which is publicly available.

(3) A city official shall not inaccurately present or describe any city report, document, information, or public record in such a manner as to mislead the public.

(d) *Conflicts of interest.*

(1) No person may be employed as a sworn police officer if such person and/or their spouse has an interest, directly or indirectly, in any business possessing any license issued by the Michigan Liquor Control Commission and operated within the jurisdiction of the Mason Police Department.

(2) The city building official shall not do any work for hire or have any interest, directly or indirectly, in any business doing work for hire within the city which requires a permit pursuant to the state construction code.

(3) The city assessor shall not assess for city record keeping purposes their own property or any property owned by an entity for which the assessor has any interest as a director, officer, partner, member, shareholder, or employee in or for a corporation, partnership, limited liability company, or other unincorporated association..

(4) No city official shall engage in employment, render services, or engage in any business, transaction or activity which is in direct conflict of interest with their official duties.

(5) No city official may use any confidential information obtained in the exercise of their official duties for personal gain or for the gain of others.

(6) No city official shall intentionally take or refrain from taking any official action, or induce or attempt to induce any other city official or employee to take or refrain from taking any official action, on any matter before the city which would result in a financial benefit for any of the following:

- a. The city official.
- b. An immediate family member of the city official.

c. An employer of the city official.

d. Any person, business or other entity that has contracted with the city, or which has received a license from the city, in the two calendar years prior to the action, and with which the city official or an immediate family member of the city official has one or more of the following financial interests:

1. Any interest as a director, officer, partner, member, shareholder, or employee in or for a corporation, partnership, limited liability company, or other unincorporated association.

2. Any interest as a landlord or tenant.

3. Any interest as a beneficiary or trustee in a trust.

4. Legal or beneficial ownership of one percent or more of the total outstanding stock of a company which is doing business with the city and which is not listed on a stock exchange.

e. Any business with which the city official or any immediate family member of the city official is negotiating or seeking prospective employment or other business or professional relationship.

(7) An appointed city official shall not discuss any matter pending before the body on which the appointed city official serves with the applicant or any person to whom written notice of the matter pending is required to be sent by city ordinance or other law except during duly called public meetings of the body. In the case of an inadvertent discussion between the appointed city official and the applicant or any person to whom written notice is required to be sent as described, such discussion shall be disclosed as a transaction in accordance with section 2-104(a).

(8) Except as otherwise permitted herein, no city official or any immediate family member of a city official shall be a party, directly or indirectly, to any contract with the city except for collective bargaining agreements. The foregoing shall not apply if the contract is awarded after public notice and competitive bidding, provided that the city official shall not have participated in establishing contract specifications or awarding the contract, shall not manage contract performance after the contract is awarded, and shall disclose the interest of the city official or any immediate family member in the contract in accordance with section 2-104(a).

(9) A city official shall not engage in a business transaction with the city except as permitted by Public Act No. 317 of 1968 (MCL 15.321 et seq.). Compliance with the requirements of said Act shall constitute compliance with section 2-103(d).

(e) *Use of city property or personnel.* A city official shall not, directly or indirectly, use or permit any other person to use, any city property or personnel for personal gain or economic benefit. City employees may use city property for personal use as a convenience if first approved by the city manager or authorized by city policy.

(f) *Political activity.* No city official shall use any city time or property for their own political benefit or for the political benefit of any other person seeking elective office, provided that the

foregoing shall not prohibit the use of property or facilities available to the general public on an equal basis for due consideration paid.

(g) *Nepotism.* The spouse of any elected city official, or of the city manager, shall be disqualified from holding any appointive office. The immediate family members of any elected city official, or of the city manager, and the spouses of any such family members shall be disqualified from holding full-time or permanent part-time employment exceeding ten hours per week with the city during the term served by said elected official or during the tenure of the city manager. This section shall in no way disqualify such relatives or their spouses who are bona fide appointed officers or employees of the city at the time of the election of said elected official or appointment of said city manager.

(h) *Retaliation.*

(1) No person or entity making a complaint or requesting an advisory opinion or participating in any proceeding of the board of ethics, shall be discharged, threatened, or otherwise discriminated against because of such action or participation.

(2) No city official shall in any way threaten the city, the city council, a city council member, a city board or commission, a city board or commission member, or a city employee.

(i) *Accountability.* Government affairs shall be conducted in an open, efficient, fair and honorable manner which enables citizens to make informed judgments and to hold city officials accountable.

(j) *Respectfulness.*

(1) All city officials shall safeguard public confidence by being honest, fair, impartial, and respectful toward all persons and property and by avoiding conduct and comments which may tend to undermine respect for city officials, for the city council, for city boards and commissions, or for the city as an institution.

(2) All city officials shall honor and respect the spirit and principles of representative democracy and will avoid conduct and comments which may discourage citizens from participating in the democratic process, will scrupulously observe the spirit as well as the letter of the law, and will demonstrate appropriate respect for the actions of city council and city boards and commissions.

(Ord. No. 132, § 5, 9-7-1999; Ord. 222, § 5, 12-3-2018; Ord. No. 230, 9-28-2020; Ord. No. 233, 3-1-2021)

Sec. 2-104. Disclosure.

(a) *Transactional disclosure.* A city official shall not participate in any transaction which subsequently would constitute a conflict of interest under section 2-103(d) without disclosing the interest in the transaction prior to participating in the transaction. If the official is a member of a decision-making or advising body, the disclosure must be made at a meeting of the body and made part of the official record of the body. A council, board, or commission member who

abstains from a vote shall disclose the reason to the entire body and that reason shall be made a part of the official record of the body.

(b) *Disclosure of gifts.* Any gift received by a city official which could influence the manner in which they enact their official duties should be reported immediately to the board of ethics. Such gifts should be returned to the donor, or donated to a charity, with the explanation to the donor that city policy will not permit the acceptance of the gift.

(Ord. No. 132, § 6, 9-7-1999; Ord. No. 233, 3-1-2021)

Sec. 2-105. Board of ethics.

(a) *Creation.* There is hereby created an independent body called the "board of ethics."

(b) *Objective.* The objective of the board of ethics is to issue written opinions regarding ethical questions pertaining to the behavior of city officials and conduct investigations of, and report on, complaints regarding ethical questions pertaining to city officials, but not legal questions, and to engage in activities which will promote ethical behavior. The behavior of city employees shall not be subject to any review by the board.

(c) *Board membership; terms; meetings; rules.*

(1) The board of ethics shall consist of five members who are city residents appointed by the mayor with the approval of the city council. City officials and the immediate family of city officials shall not be eligible for appointment to the board.

(2) Members shall be appointed for terms of three years, except that of those first appointed, two shall serve for three years, two shall serve for two years, and one shall serve for one year. Initial nominations shall be made by the mayor within 90 days of the effective date of this division, and nominations to fill vacancies and subsequent terms shall be made by the mayor within 60 days of occurrence of the vacancy or commencement of the term. The city council shall vote on confirmation within 30 days of receipt of nominations from the mayor. If nominations are not made within the periods specified, the city council shall appoint the member(s). If the city council shall not vote on confirmation within the period specified, the mayor's nominations shall be deemed confirmed and the member(s) shall be appointed.

(3) The affirmative vote of three members of the board of ethics shall be necessary for any action.

(4) The city clerk shall serve on an ex officio basis as secretary to the board without the right to vote.

(5) The board of ethics shall meet as frequently as necessary to promptly perform appointed duties. Meetings of the board shall be subject to the Michigan Open Meetings Act (MCL 15.261 et seq.).

(6) The board of ethics may adopt interpretative rules and procedures relating to the requirements and application of this division.

(7) The board of ethics shall conduct meetings in accordance with the rules of order adopted by the city council.

(d) *Powers and duties.* The board of ethics shall have the power to:

(1) Receive requests for advisory opinions from city officials.

(2) Receive complaints concerning alleged unethical conduct by a city official from any person or entity.

(3) Retain on file copies of advisory opinions, complaint reports, and other materials required to be filed under this division. Advisory opinions and complaint reports shall be retained in the office of the city clerk and shall be available to the public upon request. Advisory opinions shall be retained indefinitely and complaint reports shall be retained until the end of the current term of the subject city official.

(4) Review the request for advisory opinion or a complaint to determine if the board has jurisdiction over the matter and/or persons identified in the request or complaint.

(5) Issue an advisory opinion in response to a request.

(6) Issue a complaint report in response to a complaint.

(e) *Board actions.* Action to be taken in any individual case shall include one of the following:

(1) Issue a written advisory opinion or declare that the request for advisory opinion is outside the jurisdiction of the board of ethics.

(2) Investigate and issue a written report of findings, conclusions, and recommendations regarding a complaint.

(3) Deem that no action is warranted regarding a complaint.

(4) Refer the matter to the city attorney to determine whether legal action may be appropriate and what form by which to take such action.

(5) Forward the matter with no action to the city manager forthwith if the subject is a city employee.

(f) *Advisory opinions.*

(1) A request for an advisory opinion shall be submitted to the city clerk on a form approved by the board of ethics that is in compliance with this division. Upon receipt of a request, the board shall prepare and approve by resolution a written advisory opinion interpreting the relevant provisions of this division and relevant provisions of state law applicable to city officials unless the request is deemed outside the jurisdiction of the board. Advisory opinions shall not disclose the identities of the person(s) or entity making the request for an advisory opinion or the identity of the person(s) who are the subject of an inquiry. Advisory opinions shall be approved by the board and issued within 60 days of the meeting date at which a quorum of the board of ethics first receives the request. If additional time is needed, the time may be extended

by up to 60 additional days by action of the board. An advisory opinion shall be distributed as required by this division within 21 days of approval by the board.

(2) Advisory opinions may include guidance to city officials on questions including, but not limited to:

a. Whether an identifiable conflict of interest exists between the personal interests or obligations and official duties of a city official.

b. Whether participation in the official capacity of a city official would involve discretionary judgment with significant effect on the disposition of the matter in question.

c. Whether the result of a potential conflict of interest is substantial or constitutes a real threat to the independent judgment of a city official.

d. Whether a city official possesses certain knowledge or skill which the city will require to achieve a sound decision.

e. What effect participation under the circumstances would have on the confidence of the people in the impartiality of city officials.

f. Whether a disclosure of the personal interests of a city official would be advisable and, if so, how such disclosure should be made.

g. Whether the public interest would be best served by abstention by a city official.

h. Whether undue influence is being exerted on a city official.

(3) When the board of ethics issues an advisory opinion regarding ethical questions pursuant to this division, the city clerk shall promptly send a copy of its opinion to:

a. All city officials.

b. The city manager.

(g) *Complaints.*

(1) A complaint shall be submitted to the city clerk on a form approved by the board of ethics that is in compliance with this division. Upon receipt of a complaint, the clerk shall schedule a meeting of the board in consultation with the chair and members of the board. Once a meeting date is selected, the clerk will send a written notice to the city official who is the subject of the complaint informing the official only that a complaint has been received and the date, time, and location of the board meeting at which the complaint will be first considered by the board. At the time notice is sent to the city official, a separate notice shall also be sent to the complainant indicating the date, time, and location of the board meeting at which the complaint will first be considered by the board. Both notices shall include a declaration that the complaint is not a public record under the Michigan Freedom of Information Act (MCL 15.231 et seq.) until it is received by the board, that all inquiry regarding the complaint will be received by the board and board members only during a public meeting and in the manner approved by the board under

this section, and that the clerk will not disclose to, or discuss with, any person or entity any information regarding the complaint prior to the complaint being received by the board.

(2) Upon receipt of a complaint, the board of ethics shall review the complaint and determine if an investigation is warranted under any relevant provisions of this division and/or any relevant provisions of state law applicable to the subject city official.

(3) Upon determination that an investigation of a complaint is warranted, the board of ethics shall, in accordance with this section, investigate the circumstances surrounding the alleged unethical conduct under any relevant provisions of this division and/or any relevant provisions of state law applicable to the subject city official. The board may choose to include in the investigation conduct or comments in response to the complaint by the subject city official. While conducting an investigation, the board is hereby authorized to exercise all of the powers granted by Chapter 6, Section 6.9, of the City Charter, except that the board shall not have the power to subpoena witnesses or compel the production of books, papers, and other evidence. The board may seek the assistance and opinion of the city attorney in the investigation of a matter.

a. Upon initiation of an investigation, the board of ethics shall:

1. Prior to beginning any significant action as part of an investigation, notify the city official who is the subject of the complaint of the manner by which the city official will be allowed to respond to the complaint. The city official who is the subject of the complaint shall be provided an opportunity to address the complaint before the board prior to the board approving a complaint report.

2. Inform both the person or entity filing the complaint and the city official who is the subject of the complaint of all meetings where the investigation will be considered or discussed.

b. The board of ethics may appoint one or two of its members to investigate the complaint in the manner approved by the board and to provide a report of findings to the board for consideration.

c. The board of ethics shall prepare and approve by resolution a written complaint report including findings, conclusions, and recommended action as relevant to the specific investigation. A complaint report resolution shall be approved by the board within 60 days of the meeting date at which a quorum of the board of ethics first receives the request. If additional time is needed, the time may be extended by up to 60 additional days by action of the board. The approved complaint report resolution, including findings, conclusions, and recommended action, shall be sent to the city council within 21 days of approval by the board. Recommended actions shall include one of the following:

1. Dismissal of the complaint as having no merit.
2. No action. A no action recommendation shall include a supporting explanation.
3. Formal censure by resolution of the city council.

4. Removal of the city official by resolution of the city council when such action is legally permitted.

5. Referral by the city council to the city attorney to determine if legal action is appropriate.

d. The city council will make the final determination of whether the complaint warrants action and the nature of such action and, to that end, may request clarifying or additional information from the board of ethics. The board shall respond to any request for information by the council within 60 days of the request.

(Ord. No. 132, § 7, 9-7-1999; Ord. No. 143, 5-3-2004; Ord. 222, § 6, 12-3-2018; Ord. No. 233, 3-1-2021)

Sec. 2-106. Aspirational Intent.

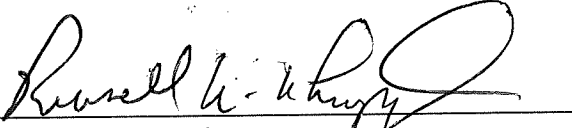
This division is intended to encourage and promote the highest standards of ethical behavior by city officials as an aspirational objective. It is anticipated that the issuance by the board of ethics of advisory opinions will conclude all matters for the board originating as requests for advisory opinions and the issuance of a complaint report will conclude all matters for the board originating as complaints. The board of ethics is not an adjudicative body and no finding of the board shall be deemed conclusive nor, in and of itself, subject any city official to penalties.

(Ord. No. 132, § 8, 9-7-1999; Ord. No. 233, 3-1-2021)

Sunset Provision. None

Effective Date. This ordinance shall take effect September 10, 2023

The foregoing Ordinance was moved for adoption by Council Member Droscha and supported by Council Member Preadmore, with a vote thereon being: YES (5) NO (1) ABSENT (1), at a regular meeting of the City Council held pursuant to public notice in compliance with the Michigan Open Meetings Act, on the 21st day of August, 2023. Ordinance No. 244 declared adopted this 21st day of August, 2023.


Russell W. Whipple, Mayor


Sarah J. Jarvis, City Clerk
City of Mason, Ingham County, State of Michigan